

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

\* \* \*

MARTIN ORTIZ,

Plaintiff,

v.

COOL FREIGHT EXPRESS INC.,  
TARANDEEP SINGH, 1 – 10, and ROE  
CORPORATIONS 1 – 10, inclusive,

Defendants.

Case No. 3:20-CV-00379-LRH-WGC

ORDER

Before the Court is Martin Ortiz’s (“Plaintiff”) motion to remand to state court dated June 26, 2020 (ECF No. 11). Cool Freight Express Inc. and Tarandeep Singh (“Defendants”) responded to the motion (ECF No. 13) and Plaintiff subsequently replied (ECF No. 14). Also, before the Court is the parties’ stipulation to amend the original complaint (ECF No. 21). For the reasons stated below, the Court will grant the Plaintiff’s motion to remand to state court, and find that the parties’ stipulation to amend the original complaint is moot.

**I. Background**

This case involves a motor vehicle collision which occurred on December 10, 2019. ECF No. 11 at 1. Because of the collision, Plaintiff filed suit against Defendants in state court on April 10, 2020. *Id.* Defendants removed the action to federal court in June 2020. ECF No. 1.

In the Notice of Removal, Defendants allege that “there is complete diversity between the parties and more than \$75,000 [is] in controversy.” ECF No. 1 at 2. Specifically, as it relates to the amount in controversy, Defendants allege that “based on multiple conversations with Plaintiff’s

1 counsel on June 2, 10, 15, 16, and 19, Plaintiff's claimed damages are believed to be well in excess  
2 of \$75,000.00..." *Id.*

3 Plaintiff contests the amount in controversy. In his motion to remand, Plaintiff states that  
4 "Defendants' Notice of Removal does not include evidence that the amount in controversy exceeds  
5 the \$75,000 jurisdictional threshold." ECF No. 11 at 2. In their response, Defendants contend that  
6 based on representations by Plaintiff—concerning the nature of the injuries, the scope of the  
7 medical treatment, the time of lost wages, and the type of vehicle damage—one could reasonably  
8 surmise that the amount in controversy exceeds \$75,000. ECF No. 13 at 3. The Court was provided  
9 with two emails between the parties regarding the amount in controversy. ECF No 13-1, 13-2. In  
10 his reply, Plaintiff maintains that Defendants are making conclusory assumptions regarding the  
11 amount in controversy based solely on hearsay statements, and not by a preponderance of the  
12 evidence. ECF No. 14. These arguments largely form the basis of this order.

13 As an aside, the parties have also stipulated to amend the original complaint outlining the  
14 exact time and location the motor vehicle collision occurred, as well as dismissing the claim of  
15 intentional infliction of emotional distress. ECF No. 21.

## 16 **II. Legal Standard**

17 Under 28 U.S.C. § 1441, "any civil action brought in a State court of which the district  
18 courts of the United States have original jurisdiction, may be removed by the defendant or the  
19 defendants, to the district court of the United States for the district and division embracing the  
20 place where such action is pending." 28 U.S.C. § 1441(a). A district court has original jurisdiction  
21 over civil actions where the suit is between citizens of different states and the amount in  
22 controversy, exclusive of interests and costs, exceeds \$75,000.00. 28 U.S.C. § 1332(a). "[T]he  
23 removing defendant bears the burden of establishing, by a preponderance of the evidence, that the  
24 amount in controversy exceeds \$[75],000.00." *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398,  
25 404 (9th Cir. 1996).

26 In determining whether the defendant has established that diversity jurisdiction exists, the  
27 district court must first consider whether it is "facially apparent" from the complaint that the  
28 jurisdictional amount in controversy requirement is met. *Singer v. State Farm Mut. Auto. Ins. Co.*,

1 116 F.3d 373, 377 (9th Cir.1997). Generally, courts apply a mechanical test to determine whether  
 2 the amount in controversy requirement has been met when a case is removed to federal court: “The  
 3 district court simply reads the ad damnum clause of the complaint to determine whether the matter  
 4 in controversy exceeds” \$75,000.00. *Id.* at 375. If it is apparent to the court that the claim was  
 5 made in good faith, then the value of the claim controls for purposes of removal, unless it appears  
 6 “to a legal certainty that the plaintiff cannot recover the amount claimed.” *Id.*

7 However, if a plaintiff’s complaint fails to specify damages, or specifies damages in an  
 8 amount less than the jurisdictional minimum, the defendant must show, by a preponderance of the  
 9 evidence, facts demonstrating that the amount involved in the litigation exceeds the statutory  
 10 jurisdictional threshold. *Sanchez*, 102 F.3d at 403–04. “Under this burden, the defendant must  
 11 provide evidence establishing that it is ‘more likely than not’ that the amount in controversy  
 12 exceeds that amount.” *Id.* at 404. Consequently, “jurisdiction may [not] be maintained by mere  
 13 averment.” *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936); *see also Sanchez*,  
 14 102 F.3d at 403.

15 Removal of a case to district court may be challenged by motion and a federal court must  
 16 remand a matter if there is a lack of jurisdiction. *See generally*, 28 U.S.C. § 1441. Removal statutes  
 17 are construed restrictively and in favor of remanding a case to state court. *See Shamrock Oil &*  
 18 *Gas Corp. v. Sheets*, 313 U.S. 100, 108-109 (1941); *see also, Gaus v. Miles, Inc.*, 980 F.2d 564,  
 19 566 (9th Cir. 1992).

### 20 **III. Discussion**

21 It is undisputed that the parties are diverse for diversity jurisdiction purposes, but Plaintiff  
 22 argues that Defendants’ notice of removal is insufficient to prove, by a preponderance of the  
 23 evidence, that the amount in controversy exceeds \$75,000.00. *See* ECF No. 11.

24 In order to meet their burden for removal, a defendant must present evidence that the  
 25 amount in controversy exceeds \$75,000. *McCaa v. Massachusetts Mutual Life Insurance*  
 26 *Company*, 330 F. Supp. 2d 1143, 1149 (D. Nev. 2004); *see also, Gaus*, 980 F.2d at 567. In his  
 27 complaint, Plaintiff requests damages in excess of \$15,000; for past and future special damages  
 28 according to proof (unspecified); for attorney’s fees, court and other costs and disbursements

1 incurred, and to be incurred in connection with this action (unspecified); for punitive damages  
2 (unspecified); and for such other and further relief this Court may deem just and proper  
3 (unspecified). ECF No. 1-3, at 13.

4 As noted, Defendants argue, that based on the nature of the injury and their correspondence  
5 with the Plaintiff, they believe that the claimed damages are to be well in excess of \$75,000. ECF  
6 No. 1 at 2. Since the Plaintiff contests the Defendant's assertion of the amount in controversy, any  
7 estimation of damages based solely on the nature of the injury is speculative without more  
8 evidence. *See Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090–91 (9th Cir.2003)  
9 (“Conclusory allegations as to the amount in controversy are insufficient”). The emails provided  
10 by the Defendant are inconclusive and provide no specific estimation as to damages.<sup>1</sup> Additionally,  
11 there is nothing in the record related to the injury which conclusively indicates the amount in  
12 controversy exceeds \$75,000. To be sure, this does not mean to suggest what the actual amount in  
13 controversy is. Rather, the available record suggests that this Court lacks jurisdiction, as it is  
14 sustained largely on “mere averment”. *McNutt*, 298 U.S. at 189.

15 Briefly, because of this ruling on the dispositive motion, the parties' stipulation to amend  
16 the complaint is ruled to be moot.


#### 17 IV. Conclusion

18 IT IS THEREFORE ORDERED that Plaintiff's Motion to Remand to State Court (ECF  
19 No. 11) is **GRANTED**.

20 IT IS FURTHER ORDERED that the Stipulation to Amend the Complaint (ECF No. 21)  
21 is **DENIED as moot**.

22  
23 IT IS SO ORDERED.

24 DATED this 21st day of October, 2020.

25  
26   
27 LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE

28 <sup>1</sup> The Court was provided two emails between the parties. Both are merely requests by the Defendants for specific estimations regarding the injuries. Neither contain an estimation. ECF No. 13-1, 13-2.